

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

PERIODIC REPORTING (NPPC ET AL.
PROPOSAL ONE)

Docket No. RM2023-3

**MOTION OF THE UNITED STATES POSTAL SERVICE FOR LEAVE TO FILE
REPLY COMMENTS REGARDING MAILERS' PROPOSAL ONE**
(February 15, 2023)

On December 19, 2022, a consortium of mailer representatives (Mailers) filed a pleading styled as “Motion For Reconsideration or, in the Alternative, Petition to Initiate a Proceeding Regarding the Appropriate Analytical Principle for Retiree Health Benefit Normal Costs.”¹ In Order No. 6430 (January 25, 2023), the Commission denied the motion for reconsideration of Order No. 6363 (December 9, 2022), and identified this docket as the one in which the Commission would consider Mailers’ alternative request for relief, denominated as Proposal One. The Order further set February 8, 2023, as the deadline to submit comments on Proposal One. Surprisingly, two comments were filed on February 8 by representatives of signatories to the original Proposal One, who were thus improperly submitting comments on their own proposal.² The Postal Service hereby moves for leave to reply to those comments, for the reasons explained below.³

As noted, Order No. 6430 simply invited comments on “NPPC et al. Proposal One.” Order No. 6430 at 31, 32. Order No. 6430 did not invite comments on the order

¹ The signatories to the December 19 pleading were NPPC, ANM, ACMA, PostCom, MMA, NAPM, and N/MA.

² One set of comments was submitted on February 8 by all signatories to the original Proposal One filing save ACMA, and another separate set was submitted by PostCom.

³ The actual Postal Service reply comments to which this motion pertains are being submitted concurrently as a separate pleading.

itself – i.e., did not invite responses to the explanations offered by the Commission in Order No. 6430 for denying the motion for reconsideration of Order No. 6363 – but rather was limited in scope to the Mailers’ Proposal One. Having had the obligation to support their proposal at the time of its submission on December 19, Mailers were not entitled to use the date specified to respond to the proposal to file “comments” that were, in essence, attempts to fill gaps identified in their original filing. Both the Mailers Comments (at 1) and PostCom (at 1) frankly acknowledge that their February 8 pleadings are actually substantively responding to Order No. 6430, rather than offering comments on Proposal One in accordance with the procedural directive of that Order.

The Mailers also acknowledge in a footnote (also on page 1) that proponents of a proposal are not entitled to file comments on their own proposals. The Mailers seek to justify their departure from this fundamental principle of due process by citing discussions in Order No. 6430. Yet this is a circumstance entirely of Mailers own construction. Had Mailers simply filed their proposal as envisioned by Order No. 6363, rather than entwining that proposal with a motion for reconsideration of Order No. 6363, Order No. 6430 would never have been necessary, and the discussions in that Order to which Mailers now seek to respond would only have emerged when the Commission ruled on the merits of Proposal One. These circumstances do not justify Mailers’ attempt to grab another bite at the apple.

Further, PostCom makes a patently inaccurate statement in seeking to shift the blame to the Commission with respect to why its new comments deserve

consideration.⁴ PostCom points to the portions of Order No. 6430 confirming the applicability of the regulatory principle that attributable costs cannot exceed accrued costs, and then alleges:

Therefore, the Petition did not specifically request a change to this principle, *nor have any parties had an opportunity to discuss it in pleadings filed in this and related dockets.*

PostCom Comments at 2 (emphasis added). In fact, the Postal Service identified that principle in its January 4 response that addressed both the motion for reconsideration and the merits of Proposal One. The Mailers explicitly sought leave to reply to that Postal Service pleading and accordingly submitted reply comments to it on January 11, 2023. PostCom was a signatory to those reply comments, and cannot validly claim that “no parties” had any previous opportunity to discuss the regulatory principle that now PostCom asserts is causing it such problems. In fact, on page 3 of the very same comments where it is now claimed (on page 2) that there was no previous opportunity to address the matter, PostCom affirmatively takes issue with the discussion of this exact principle in the Postal Service’s January 4 response. Having already filed reply comments that potentially could have disputed the Postal Service’s representations regarding that regulatory principle, PostCom has no basis to now claim that it is the Commission that has created the difficulties PostCom alleges.

Of course, the fact that Mailers (including PostCom) have already submitted reply comments in response to the Postal Service’s previous pleading should likewise have created a bar to further filings by the Mailers’ consortium as a whole on February 8 to

⁴ Unlike the Mailers’ Comments, the PostCom Comments do not explicitly acknowledge the procedural irregularity of proposal proponents submitting comments on their own proposal, yet the context of the quoted incorrect statement leaves no doubt PostCom was attempting to justify its efforts to do exactly that.

the same extent as it should have created such a bar for PostCom. Neither one was entitled to file further comments on their own proposal on February 8. The Mailers have not only filed further comments, but took the additional step of submitting a new Statement by Professor John Panzar in support of their proposal. The Mailers and PostCom jointly have made a complete hash of any attempt to maintain procedural fairness in this proceeding.

Thus, the Postal Service submits that it is beyond dispute that the Postal Service is entitled to leave to file reply comments to address the matters raised by Mailers and PostCom on February 8 in the guise of “comments” on their own proposal. While the Postal Service could alternatively move to strike those February 8 pleadings, under the Commission rule set forth in section 3010.164, a motion to strike seeks extraordinary relief and would necessarily entail some (and possibly substantial) further procedural wrangling. Given the press of time under current circumstances, the Postal Service takes the view that the interests of all are best served by eschewing any litigation of these procedural issues, and instead seeking leave to submit brief reply comments that respond to substantive points made by the Mailers and PostCom.

Therefore, for the reasons explained above, the Postal Service respectfully requests that the Commission grant the Postal Service leave to reply to the pleadings

submitted in this docket on February 8, 2023, by the Mailers and by PostCom.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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